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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/542,315

07/13/2005

Christian Quellet

102790-195 (30059 US)

2667

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EXAMINER

GODENSCHWAGER, PETER F

ART UNIT

PAPER NUMBER

1796

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/542,315	<b>Applicant(s)</b> QUELLET ET AL.	
	<b>Examiner</b> PETER F. GODENSCHWAGER	<b>Art Unit</b> 1796	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/13/2005</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the present instance, claim 3 recites the broad recitation “graft and block copolymers”, and the claim also recites “preferably poly(ethylene-b-ethylene oxide)” and “more preferably poly(ethylene-b-ethylene oxide) having a ethylene oxide level preferably lower than 80% and a molecular weight lower than 2500 g/mol”, which is the narrower statement of the range/limitation. For purposes of further examination, the claim will be interpreted broadly to limit the graft and block copolymers to any graft and block copolymer.

In the present instance, claim 4 recites the broad recitation “acrylamide” and the claim also recites a list of specific acrylamides that he acrylamide is preferably chosen from which is the narrower statement of the range/limitation. For purposes of further examination, the claim will be interpreted broadly to limit the acrylamide to any acrylamide.

In the present instance, claim 5 recites the broad recitation “partially-crystallisable polyolefins”, and the claim also recites “preferable partially-crystallisable polyethylene having a molecular weight lower than 10,000 g/mol” which is the narrower statement of the

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range/limitation. For purposes of further examination, the claim will be interpreted broadly to limit the partially-crystallisable polyolefin to any partially-crystallisable polyolefin.

In the present instance, claim 6 recites the broad recitation "at least one silica-containing compound", and the claim also recites a list of specific silica compounds that the silica is preferably chosen from which is the narrower statement of the range/limitation. For purposes of further examination, the claim will be interpreted broadly to limit the silica-containing compound to any silica-containing compound.

In the present instance, claim 7 recites the broad recitation "non-ionic surfactant", and the claim also recites a list of specific non-ionic surfactants that the non-ionic surfactant is preferably chosen from which is the narrower statement of the range/limitation. For purposes of further examination, the claim will be interpreted broadly to limit the non-ionic surfactant to any non-ionic surfactant.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6-13 are rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657).

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Regarding Claims 1 and 9-11: McManus et al. teaches a fragrance composition (Pg. 19, Ln 29) comprising water (Pg. 1, Ln. 11) and a liquid crystal forming material (Pg. 1, Lns. 9-10) containing a fatty alcohol having 22 carbon atoms (behenyl alcohol) (Pg. 12, Lns. 19-25).

Regarding Claim 2: McManus et al. further teaches adding as a reinforcing (thickening) material, an inorganic material (hydrated silica) (Pg. 16, Ln. 12).

Regarding Claim 3: McManus et al. further teaches that reinforcing material (thickening agent) is gelatin (gelatine) (Pg. 16, Ln 11).

Regarding Claim 6: McManus et al. further teaches that the reinforcing material (thickening agent) is a silica-containing compound (hydrated silica) (Pg. 16, Ln. 12).

Regarding Claim 7: McManus et al. further teaches the liquid crystal-forming material comprising, in addition to a fatty alcohol having 22 carbon atoms (behenyl alcohol), a non-ionic co-emulsifier (surfactant) such as ethoxylated fatty esters (ethoxylated fatty alcohols) of 10 to 22 carbon atoms (Pg. 10, Lns 10-13 and Pg. 12, Lns. 29-30).

Regarding Claim 8: McManus et al. further teaches that the composition is a emulsion (dispersion) where the liquid crystal material is in the form of particles (vesicles) (Pg. 3, Ln. 32-Pg. 4, Ln.4).

Regarding Claim 9: McManus et al. teaches all the limitations of the composition of claim 1, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients.

Regarding Claim 10: McManus et al. teaches all the limitations of the composition of claim 1, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients.

Regarding Claim 11: McManus et al. teaches the all the limitations of the composition of claim 1, therefore, the claimed physical properties would inherently be achieved by the composition as claimed. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients.

Regarding Claims 12 and 13: McManus et al. further teaches the composition as a skin moisturizing composition, (Pg. 1, Lns. 5-12) a personal care product commonly found in the house (household product).

Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by McManus et al. (Intl. Pub. No. WO 01/78657) when taken with Fowler et al. (US Pat. No. 5,534,265).

McManus et al. teaches the composition of claim 1 as set forth above. Furthermore, McManus et al. teaches that the reinforcing material (thickening agent) is one taught by Fowler et al. which is incorporated by reference in its entirety (Pg. 15, Lns 23-25). Fowler et al. teaches polyacrylamide co-polymers as reinforcing materials (thickening agents) (9:33-35).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over McManus et al. (Intl. Pub. No. WO 01/78657) in view of Gerecht et al. (US Pat. No. 2,806,842).

McManus et al. teaches the composition of claim 1 as set forth above.

McManus et al. does not teach the composition comprising a hydrophobic reinforcing material (thickening agent) chosen from block and graft copolymers. However, Gerecht et al. teaches graft copolymers with hydrophobic backbones that are soluble in non-polar solvents (hydrophobic) (1:15-16, 64-70). McManus et al. and Gerecht et al. are combinable because they are concerned with the same field of endeavor, namely components useful as additives for

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lotions. At the time of the invention, a person of ordinary skill in the art would have found it obvious to use the graft copolymers of Gerecht et al. in the composition of McManus et al. and would have been motivated to do so because Gerecht et al. teaches that the graft copolymers would be useful as thickening agents in lotions (5:15-19).

### *Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER F. GODENSCHWAGER whose telephone number is (571)270-3302. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harold Y Pyon/  
Supervisory Patent Examiner, Art Unit 1796

PFG  
June 2, 2008



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